



MEMORANDUM

To: Mayor and City Councilors

From: Rich Olson, City Manager
Vivian White, City Clerk

Date: November 3, 2015

Re: Consideration – Amendment to Council Rules of Procedure Voting Rule

BACKGROUND:

Prior to July 17, 2015, NCGS § 160A-75 stated the following:

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e)(2). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

When the Council's Rules of Procedure document was drafted, Rule 21 was compliant with NCGS § 160A-75. The Rule currently reads as follows:

Rule 21. Duty to Vote.

Every member must vote unless excused by the remaining members according to law. A member who wishes to be excused from voting shall so inform the presiding officer, who shall take a vote of the remaining members. No member shall be excused from voting except upon matters involving the consideration of his or her own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

ANALYSIS:

Pursuant to NCGS § 160A-75, the general rule is that, when a member fails to vote because he or she has left the Council Chamber without being excused, the member's failure to vote "shall be recorded as an affirmative vote." This section requires a council member to vote on any matter that comes before the council, unless the member has been excused from voting because either (1) the matter concerns the member's own financial or official conduct; or (2) the member is prohibited from voting on the matter under NCGS 14-234 (public contract with direct benefit to the member), NCGS 160A-381(d) (zoning map or text amendment reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member), or NCGS 160A-388(e)(2) (quasi-judicial matter for which the member has a fixed opinion not susceptible to change, undisclosed ex parte communications, a close relationship to an affected person, or a financial interest in the outcome).

Now, however, thanks to Session Law 2015-160, there is an important exception to this rule. Session Law 2015-160 (attached) amended NCGS § 160A-75 to say that a member's unexcused failure to vote on a proposed amendment to or repeal of a zoning ordinance will not be counted as an affirmative vote, provided the zoning ordinance change was initiated on or after August 1, 2015.

This Act leaves NCGS 160A-75's default "yes" rule in place for all City Council votes except for those taken under NCGS 160A-385, that is, votes to amend or repeal zoning ordinances. Under amended NCGS 160A-75, when the matter in question is a proposed zoning ordinance change initiated on or after August 1, 2015, a Council member's unexcused failure to vote must be recorded as an abstention, not as an affirmative vote. This limited exception to the default "yes" rule could make it more difficult for councils to put together the majorities necessary to adopt controversial zoning ordinance changes. It will no longer be possible for a member to supply a vote in favor of such a measure without actually casting a vote in support of it.

Due to the passage of Session Law 2015-160, it is advisable for the Council to amend Rule 21 of the Council's Rules of Procedure to provide for this voting exception. Staff suggests that the current rule text be amended to read as follows:

Every member must vote unless excused by the remaining members according to law. A member who wishes to be excused from voting shall so inform the presiding officer, who shall take a vote of the remaining members. No member shall be excused from voting except upon matters involving the consideration of his or her own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote, **except for those votes taken pursuant to NCGS 160A-385 to amend or repeal zoning ordinances. Failure of a member to vote on zoning ordinance matters pursuant to NCGS 160A-385 shall be officially recorded in the minutes of the meeting as an abstention.**

STAFF RECOMMENDATION:

By motion, approve the suggested amendment to Rule 21 of the Council Rules of Procedure to be effective immediately.

Reminder: Adoption of this amendment shall require an affirmative vote equal to or greater than two-thirds of all the actual membership of the council, excluding vacant seats, and not including the mayor.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-160
HOUSE BILL 201**

**AN ACT TO AMEND THE PROCESS BY WHICH THE CITY COUNCILS RECEIVE CITIZEN
INPUT IN ZONING ORDINANCE AMENDMENTS.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-385(a) reads as rewritten:

"§ 160A-385. Changes.

(a) Qualified Protests.Citizen Comments.

(1) ~~Zoning ordinances may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the city council. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered "members of the council" for calculation of the requisite supermajority.If any resident or property owner in the city submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the city council. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.~~

(2) ~~To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the "owners" of potentially qualifying areas.~~

(3) ~~The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i) special use district, (ii) conditional use district, or (iii) conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special use district, conditional use district, or conditional district."~~

SECTION 2. G.S. 160A-386 is repealed.

SECTION 3. G.S. 122C-403(3) reads as rewritten:

"(3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, 3C, 5, 6, and 7, of Chapter 160A of the General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a

special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, ~~and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply,~~ but the Secretary shall give the mayor of the Town of Butner at least 14 days' advance written notice of any proposed zoning change. The Secretary may designate Advisory establish a board to act like a Board of Adjustment to make recommendations to the Secretary concerning implementation of plans for the development of the reservation. When acting as a Board of Adjustment, Advisory that board shall be subject to subsections (b), (c), (d), (f), and (g) of G.S. 160A-388."

SECTION 4. This act also repeals any local act authority for submission, review, or action by any municipality upon any zoning protest petition, whether or not enacted as a provision in a municipal charter.

SECTION 5. G.S. 160A-75 reads as rewritten:

"§ 160A-75. Voting.

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e)(2). In all other ~~cases,~~cases except votes taken under G.S. 160A-385, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 6. This act becomes effective August 1, 2015, and applies to zoning ordinance changes initiated on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 10:30 a.m. this 17th day of July, 2015